AFR

HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION (C) No. 2435 of 2007

Petitioner: Shri Indar Chand Rakecha

Versus

Respondents The State of Chhattisgarh and others.

Post for order 19 -11-2007

Sd/-
Satish K.Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 2435 of 2007

PETITIONER		Shri Indar Chand Rakecha, aged about 44 years, Notary/Advocate, S/o. Late Shri Baluram Near New Bus Stand, Balod, Distt. Durg (CG).
	Versus	
RESPONDENTS	1)	State of Chhattisgarh, through the Secretary, Law & Legislative Works Department, D.K.S. Bhawan, Distt. Raipur (CG).
	2)	Deputy Secretary, Law & Legislative Works Department, D.K.S. Bhawan, Distt. Raipur (CG).
INTERVENOR	3)	Sewakram Sonbarsa, S/o. Late Brijlal Sonbarsa, aged about 57 years, R/o. Magarpara, Balod, Distt. Durg (CG).

(Writ Petition under Article 226 of the Constitution of India)

SB: Hon'ble Mr. Satish K. Agnihotri, J.

Present: Shri Indar Chand Rakecha, petitioner in person.
Shri Vinay Harit, Deputy Advocate General with Shri S.K. Mishra, Panel Lawyer for the respondents No. 1 & 2/State.
Smt. Fouzia Mirza, counsel for the Intervenor.

ORDER

(Passed on 19th 11-2007)

By this petition, the petitioner seeks a direction to quash the order dated 5-4-2007 (Annexure P/2) passed by the respondent No.2, whereby the appointment of the petitioner by order dated 2-8-2006 was cancelled on the ground that due to bona fide mistake his appointment was made against the reserved post in excess of vacancy.

2) The indisputable facts, in nutshell, are that the petitioner is a practicing Advocate. By order dated 1-8-2006 (Annexure P/1), the petitioner was appointed as Notary in and throughout Tahsil Balod, District Durg. Subsequently, thereafter by order dated 5-4-2007 (Annexure P/2), the appointment of the petitioner as Notary was cancelled on the ground that the appointment was made due to bona fide mistake against the reserved post. There was no vacancy of Notary in Tahsil Balod, District Durg.

3) According to the respondents No. 1 and 2/State, as per notification dated 23-8-2002 (Annexure R/1), there were six sanctioned posts for Balod, out of six Notaries, two Notaries were allowed to function at Dallirajhara for administrative convenience. By mistake, eight appointments were made in Tahsil Balod District, Durg against six sanctioned posts of Notaries. The appointment of the present petitioner as Notary was challenged in this Court in Writ Petition No. 4011 of 2006 (Santosh Chandparekh and 5 others Vs. State of Chhattisgarh and two others) on the ground that the appointment of the petitioner was in excess of posts available in Tahsil Balod, District Durg. The mistake was immediately rectified and thus, the appointment of the petitioner being in excess of the sanctioned posts, was cancelled. This Court, after having considered the issue of appointment of the petitioner in Writ Petition No. 4011/2006 (Santosh Chandparekh & 5 others Vs. State of Chhattisgarh & 2 others), wherein the petitioner was a party-respondent, dismissed the said petition as having become infructuous as the respondents No. 1 and 2/State passed the order, which is impugned herein.

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4) The petitioner in person, who was a party respondent in Writ Petition No.4011/2006, did not question passing of the impugned order and accepted the same when the said petition was dismissed as having become infructuous.

5) The question arises as to whether the petitioner be permitted to challenge the said order on the basis of which the earlier Writ Petition No.4011/2006 was found infructuous. The petitioner was a party respondent in the said petition and did not raise any objection when in view of cancellation of his appointment, the said petition was held as infructuous.

6) Shri Indar Chand Rakecha, petitioner in person, submits that the impugned order dated 5-4-2007 (Annexure P/2) is bad and deserves to be quashed on the sole ground that he was not afforded an opportunity of hearing before the order was passed. He further submits that the order involves civil consequences. Thus, it was necessary to follow the principles of natural justice and fair play in-action.

7) Shri Vinay Harit, learned Deputy Advocate General with Shri S.K. Mishra, learned Panel Lawyer appearing for the respondents No. 1 and 2/State, per contra, submits that the order dated 2-8-2006 appointing the petitioner as Notary in Tahsil Balod, District Durg, was invalid and void as the appointment was made in excess of vacancy available. Six Advocates appointed as Notaries were already working in Tahsil Balod, District Durg. Learned counsel further submits that even otherwise, the dispute with regard to the appointment of the petitioner as Notary was considered at length in Writ Petition No. 4011/2006 and during pendency of the said petition when the appointment of the petitioner as Notary was cancelled, the said petition was dismissed as having become

infructuous. The present petitioner was a party respondent No.3 in the said writ petition and he did not raise any objection when the Court found that in view of the subsequent order dated 5-4-2007, which is impugned herein, Writ Petition No. 4011/2006 became infructuous.

8) Smt. Fouzia Mirza, learned counsel appearing for the intervenor adopts the submission made by learned counsel appearing for the respondents No. 1 and 2/State.

9) I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the appointment of the petitioner was in excess of sanctioned strength i.e., six Notaries in Tahsil Balod, District Durg. When the appointment of the petitioner was challenged in Writ Petition No. 4011 of 2006, wherein the petitioner was a party respondent No.3, the appointment of the petitioner which was invalid, was cancelled, this Court found that the writ petition No.4011 of 2006 became infructuous.

10) I do not find any infirmity in the impugned order. With regard to the principles of natural justice, as the petitioner was not afforded an opportunity of hearing, the petitioner was given full opportunity; firstly in Writ Petition No. 4011/2006 and secondly in this writ petition. The petitioner could not make out a case of prejudice when opportunity of hearing was given to him. Had the petitioner been given opportunity of hearing, the impugned order would not have been different. It is admitted by all the parties that the appointment of the petitioner was in excess of sanctioned strength of Notaries in Tahsil Balod.

11) In P.D. Agrawal Vs. State Bank of India and others[1], the Supreme Court has observed as under:

[1] (2006) 8 SCC 776

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> "The principles of natural justice, as noticed hereinabove, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma and Rajendra Singh v. State of M.P., the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of *audi alteram partem*, a clear distinction has been laid between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."

12) In the premises mentioned hereinabove, this petition is dismissed.

No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

Raju